IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.40/2005

IN

FAMILY COURT APPEAL NO.19/2005

Prashant K.Joshi .... Appellant.

Versus

Kshipra Prashant Joshi . ... Resptd.

Mr.Sandeep A.Bhagwat for appellant.

None for respdt.

CORAM: S.B.MHASE &

S.R.SATHE,JJ.

DATE : **12th July 2005.**

PC:

1. Heard. This is a Civil Application making prayer that during the pendency of Appeal, Order passed by the Family Court in Petition No.C-38/2003 is stayed. The Petition No.C-38/2003 was under Section 18 of Hindu Adoption and Maintenance

Act for getting maintenance, since wife/respondent is staying separately. The trial court has granted the maintenance at the rate of RS.15,000/-per month to the respondent/wife with effect from 22/12/2004. Learned counsel for appellant stated that all the arrears have been deposited. He further stated that further recovery at the rate of Rs.15,000/- may be stayed. He is showing his willingness to pay the maintenance at the rate of Rs.7500/- per month till the final disposal of the Appeal. So far as the salary evaluation of the appellant as made by the trial court is concerned, it is not challenged before us. That shows that the total salary of the appellant is Rs.30,000/- per month. Ld. counsel however, submitted that the respondent/wife is running beauty parlour at Pune and she is earning Rs.30,000/- to 40,000/- per month. However, in the pleading it is only stated that respondent/wife is running Beauty Parlour, but her income from the said profession is not pleaded. Apart from that no evidence has been brought on record by the appellant before the trial court to demonstrate that she is running a beauty parlour. No cross examination appears to have been carried out of the respondent./wife on this aspect. Simply raising a plea is not sufficient. Since the

husband has raised the plea in respect of the income of the wife, he is under obligation to prove the said assertion. As we find, prima facie that there is no material before the trial court to consider the income of wife, the trial court has rightly considered that she has no income and passed the order of maintenance considering the income of the appellant. For grant of interim stay , there is no prima facie case made out. Apart from that wife is expected to lead life as per the status of the husband and therefore,it is inappropriate to stay the order passed by the trial court. Viewed from any angle we do not find any substance in the Civil Application and therefore,

it is rejected.

2. Cost in cause.

(S.R.SATHE) **(S.B.MHASE)**